



Posted: 7/12/99
4:45 p.m.

Order 99-7-5

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 12th day of July, 1999

Served: July 14, 1999

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Agreement Adopted by the Tariff :
Coordinating Conferences of the : Docket OST-99-5741
International Air Transport Association : R-1 through R-12
relating to TC31 Fares :
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ORDER

Various members of the International Air Transport Association (IATA) have filed agreements with the Department under section 41309 of Title 49 of the United States Code (Code) and Part 303 of the Department's regulations. The agreement was adopted at the TC31 Passenger Tariff Coordinating Conference held in Los Angeles May 11-14, 1999, for effectiveness July 15, 1999. 1/

The agreement is comprised of resolutions between the South West Pacific region of Area 3 and North America/Caribbean. The agreement amends selected fares between these areas to reflect those filed in the marketplace, and increases first and intermediate class fares from Australia to Canada seven and three percent, respectively, to offset increased costs. The current three-season excursion fare structure from North America is changed to four seasons, effective October 1, 1999, with new peak season round-trip fares \$100 over the current peak levels.

We will approve the agreement. Based on our review of the information submitted and other relevant material, we conclude that the agreement will not result in fares that are unlawful or injurious to competition in the markets at issue. Our approval of the proposed premium and promotional fares is consistent with Department policy as stated in Order 85-3-8, March 4, 1985. We allow carriers wide latitude 1/ IATA memorandum PTC31 S/CIRC 0067, filed with the Department May 27, 1999, with a technical correction filed June 22, 1999.

tude in pricing these types of fares, which are generally sensitive to market demand and other competitive pressures that obviate the need for regulatory intervention in most circumstances.

We do, however, continue our regulatory supervision over direct-service normal economy fares. 2/ The agreement proposes to increase economy fares that are above the Department's regulatory ceilings as established by the SFFL plus upward fare flexibility. 3/ The carriers have not furnished any economic justification in support of these proposed fare levels. Under these circumstances, we will condition our approval of the agreement to require that direct-service normal economy fares shall be no higher than the Department's applicable regulatory ceilings, and that each carrier, when filing tariffs implementing the agreement, provide a comparison of its proposed direct-service normal economy fares against the Department's SFFL ceiling levels.

Acting under Title 49 of the United States Code, and particularly sections 40101, 40103, 41300, and 41309:

1. We do not find that the resolutions set forth in the Attachment to this order, and which have direct application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code, provided that (a) normal economy fares for U.S.-TC3 direct-service markets filed by each IATA carrier in tariffs filed with the Department pursuant to these resolutions shall not exceed the regulatory ceilings at the time of filing, and (b) each IATA carrier submits, at the time of filing and for comparative purposes, its SFFL base fares, proposed direct-service normal economy fares, and the percentages by which its proposed direct-service normal economy fares differ from the SFFL base levels for each market for which it files revised direct-service normal economy fares;

2. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless accepted on foreign policy and comity grounds by Order 85-5-32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, such conferral is mandatory under 49 U.S.C. 41308.

2/ We generally exercise regulatory control over point-to-point economy fares, generally defined as "unbundled" or "restricted" fares, and, in markets where they are unavailable, the unrestricted economy fares.

3/ For example, the agreement would increase the Los Angeles-Papeete economy fare to \$1,504 one-way, whereas the current regulatory ceiling is \$1,074.

Order 85-5-32 contemplates that the products of fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32

and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Code. Consequently, we will grant antitrust immunity to the agreement in Docket OST-99-5741, as set forth in finding paragraph 1 above, subject to the conditions imposed therein.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreement contained in **Docket OST-99-5741**, as set forth in finding paragraph 1 above, subject to the conditions imposed therein.

By:

A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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Resolutions With Direct Application In
Foreign Air Transportation, Docket OST-99-5741
TC31 South Pacific

| <u>Reso.</u> | <u>Description</u> | <u>No.</u> |
|--------------|--|------------|
| 002 | Special Amending Resolution (New) | R-1 |
| 071w | Excursion Fares From North America, Caribbean To South West Pacific Via PA (Amending) | R-2 |
| 073k | Advance Purchase Excursion Fares From North America, Caribbean To South West Pacific Via PA (Amending) | R-3 |
| 073ww | One Way Advance Purchase Excursion Fares From South West Pacific To North America, Caribbean Via PA (Amending) | R-4 |
| 073xx | Super Apex Fares From North America, Caribbean To South West Pacific Via PA (Revalidating and Amending) | R-5 |
| 056d | First Class Fares Via PA, PN (Amending) | R-6 |
| 046d | Intermediate Class Fares Via PA, PN (Amending) | R-7 |
| 066d | Economy Class Fares Via PA, PN (Amending) | R-8 |
| 071xx | Excursion Fares From Australia, Fiji, To North America, Caribbean Via PA (Amending) | R-9 |
| 073mm | One Way APEX Fares From South West Pacific To North America, Caribbean Via PA (Amending) | R-10 |
| 075c | APEX Fares From Australia To North America, Caribbean Via PA (Amending) | R-11 |
| 075yy | Super APEX Fares From Australia To North America, Caribbean Via PA (Amending) | R-12 |